IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20-4-2006

Coram:

The Honourable Mr. Justice T.V. MASILAMANI

C.R.P. (PD) Nos.1682 of 2004 and 177 of 2005
and
C.M.P.No.15737 of 2004

1. Tmt Radha @ Booma
2. Sivakumar @ Pirabu Kandaswami
3. Buvana .. Petitioners (Defendants 5 - 7/Respondents 5- 7/1st Respondent/Plaintiff/Petitioner

vs.

1. R.Palaniswamy
2. The District Collector,
   Coimbatore District,
   Coimbatore.
3. The Tahsildar,
   Tiruppur. .. Respondents 2 and 3 (Defendants 1 and 2/Respondents 1 and 2)

C.R.P.(PD) No.1682 of 2004 filed under under Article 227 of the Constitution against the fair and decretal orders dated 18.6.2004 made in I.A.No.1241 of 2002 in O.S.No.377 of 1992 on the file of the District Munsif, Tirupur.

C.R.P.(PD) No.177 of 2005 filed under Article 227 of the Constitution against the fair and decretal orders dated 19.11.2004 made in I.A.No.1547 of 2004 in O.S.No.377 of 1992 on the file of the District Munsif, Tirupur.

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For Petitioners : Mr.V.Ayyadurai in both

For Respondents : Mr.K.Govi Ganesan for R1
RR 2 and 3 given up

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O R D E R

The revision petitioners are the defendants 5 and 7 in O.S.No.377 of 1992 on the file of the District Munsif, Tiruppur.

2. The first respondent/plaintiff filed the petitions in I.A.No.1241 of 2002 under Order 9 Rule 9 C.P.C. to restore the suit which was dismissed for default and I.A.No.1547 of 2004 Order 6 Rule 17 C.P.C. to amend the plaint suitably in view of the subsequent events. The respondents/defendants filed the counters in the said petitions before the court below resisting the same and after hearing both sides, the learned District Munsif allowed the petitions on payment of costs by the respondents to the revision petitioners on or before 2.7.2004 and 3.12.2005 respectively. Questioning the legality of the impugned orders, the revision petitioners have come forward with these revisions.

3. Heard Mr.V.Ayyadurai, learned counsel for the revision petitioners and Mr.K.Govi Ganesan, learned counsel for the respondents.

4. The first respondent/plaintiff filed the suit for permanent injunction against the revision petitioners and the respondents 2 and 3 on the ground that the suit property being a poramboke land is in his possession and enjoyment and that the revision petitioners are interfering with such enjoyment of the property. The suit was dismissed for non prosecution on 19.4.2002. However since the first respondent filed the petition within time and produced Ex.A-1, the medical certificate dated 29.4.2002, learned District Munsif accepted the explanation offered by the first respondent for his non-appearance on the adjourned date as he was admitted to hospital as an inpatient from 9.4.2002 to 29.4.2002 for treatment.

5. Further in addition to the evidence of the first respondent as P.W.1, he has examined the Doctor as P.W.2 and therefore this Court is of the opinion that the court below rightly appreciated the evidence on record and allowed the petition filed by the first respondent under Order 9 Rule 9 C.P.C. and restored the suit which was dismissed for default.

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6. It is for this reason that I am unable to endorse the view of the learned counsel for the revision petitioners that the evidence of R.W.1, the second petitioner herein should have been relied upon by the court below so as to dismiss the petition filed by the first respondent. Hence, the impugned order now under question in C.R.P.No.1682 of 2005 is confirmed and the revision dismissed.

7. As regards the other petition in I.A.No.1547 of 2004 and the consequential impugned order, learned counsel for the revision petitioners has argued vehemently that since the first respondent was dispossessed in accordance with law after the suit was dismissed for non prosecution, his remedy is to file a separate suit under Section 6 of the Specific Relief Act and that the petition for amendment of the plaint praying for recovery of possession of the suit property by way of mandatory injunction is not maintainable.

8. Learned counsel appearing for the revision petitioners has argued at the outset that since the very nature of the claim originally made by the first respondent in the suit has been altered and new cause of action introduced, the amendments sought for by the respondent should not have been ordered as prayed for. He has relied on the decisions NAIR SERVICE SOCIETY v. K.C.ALEXANDER (AIR 1968 S.C. 1165), TIRUMALA TIRUPATI DEVASTHANAMS v. K.M.KRISHNAIAH (AIR 1998 S.C. 1132), NATESAN v. SRI BALAMURUGAN FINANCE (2006 (1) C.T.C. 613) in support of his contention in this respect.

9. In the case decided by the Honourable Supreme Court in AIR 1968 S.C. 1165, it was held that in view of the limitation under Articles 64 and 65 of the Limitation Act, the suit filed for possession after the expiry of the said period was held as not maintainable. Similarly, in the decision AIR 1998 S.C. 1132, the suit for permanent injunction was filed against the true owner and that therefore his plea that he had trespassed into the property and continued to be in possession to the detriment of the true owner was negatived.

10. In the judgment in 2006 (1) C.T.C. 613, the case was in respect of the suit filed for recovery of money on the basis of the promissory note and thereafter an amendment was sought for basing the claim on original cause of action which was refused by the court. Similarly, in the case reported in 1996 (II) C.T.C. 452 (O.M.S. ABDUL BASITH ALIM SAHIBIT v. S.S.MOHAMED ALI) relied on by the

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revision petitioners, originally suit filed for bare injunction was sought to be amended for recovery of possession on the ground that defendant failed to pay rent and that the plaintiff was Muthavalli of wakf and on such factual aspect, the amendment of the plaint was not allowed by the court.

11. The above facts and circumstances of the decisions cited above in my opinion are entirely different from the facts of this case. In this suit, the first respondent prayed for permanent injunction on the basis of his possession of a poramboke land belonging to the respondents 2 and 3 herein, namely, the District Collector representing the Government and the Tahsildar of the concerned Taluk. The revision petitioners' claim to have been inducted into possession of the suit property after dismissal of the suit for non-prosecution and therefore the paramount title holder, namely, the Government represented by the respondents 2 and 3 herein have not claimed that they have recovered possession of the suit property from the first respondent. But, on the contrary, since the revision petitioners have claimed to have been put in possession of the property subsequent to the dismissal of the suit, the amendment sought for by the first respondent was necessitated for the reason of the subsequent events and therefore this Court is of the considered view that there is no change of the nature of the suit as well as the cause of action.

12. In view of such factual aspects of the case, this Court finds that in view of the subsequent events, the first respondent is entitled to amend the plaint suitably instead of driving him to file a separate suit against the revision petitioners in respect of the same property. Thus this Court finds no illegality or infirmity in the impugned order and it follows that the impugned orders passed by the court below have to be sustained.

13. For the reasons aforesaid, the Civil Revision Petitions are dismissed. Consequently, C.M.P.No.15737 of 2004 is closed. However there is no order as to costs.

dpp

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To
The District Munsif, Tirupur.

+ one cc to Mr. K. Govi Ganesan, Advocate sr no. 20037

TJL(CO)
NM(10.05.2006)

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and 177 of 2005;&
C.M.P.No.15737 of 2004

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